

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Joshua Alan McBee,	)	Case No.: 1:24-cv-7311-JD-SVH
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<b>ORDER AND OPINION</b>
Ms. Gentry,	)	
	)	
Defendant.	)	
	)	

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This matter is before the Court with the Report and Recommendation (“Report”) of United States Magistrate Judge Shiva V. Hodges (DE 16), made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) of the District of South Carolina concerning the Magistrate Judge’s initial review of Plaintiff Joshua Alan McBee’s (“Plaintiff” or “McBee”) pleadings.<sup>1</sup>

**A. Background**

The Report sets forth the relevant facts and legal standards, which the Court incorporates without a complete recitation. In any event, the Court provides this summary as a brief background.

McBee, proceeding *pro se* and *in forma pauperis*, sued Defendant Ms. Gentry (“Defendant”) under 42 U.S.C. § 1983. Plaintiff alleges “As DHO Ms. Gentry

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<sup>1</sup> The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

knowingly forced me to sleep on cold steel over seven different times even though I am obviously handicapped, wheelchair bound.” (DE 1 at 4.)

On January 7, 2025, the Court ordered Plaintiff to complete the documents necessary to advance his case by January 29, 2025. (DE 8.) Plaintiff was warned that failure to comply with the Court’s order could result in dismissal. (*Id.*) On January 17, 2025, Plaintiff filed a notice of change of address. (DE 10.) However, on February 3, 2025, the Court’s January 7 order was returned as undeliverable. (DE 11.) In response, on February 4, 2025, the Court directed the Clerk of Court to resend the order to Plaintiff’s updated address and extended the deadline for compliance to February 25, 2025. (DE 13.)

Plaintiff has not filed a response or submitted the required documents by the extended deadline.

### **B. Report and Recommendation**

On March 3, 2025, the Magistrate Judge issued the Report recommending that Plaintiff’s Complaint be summarily dismissed without prejudice for failure to comply with court orders, under Rule 41, Fed. R. Civ. P. (DE 16.) The Report states:

It is well established that a district court has authority to dismiss a case for failure to prosecute. The authority of a court to dismiss sua sponte for lack of prosecution has generally been considered an ‘inherent power,’ governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases. In addition to its inherent authority, this court may also sua sponte dismiss a case for lack of prosecution under Fed. R. Civ. P. 41(b).

(*Id.* at 2) (Internal citations and quotations omitted.) Plaintiff did not object to the Report.

### C. Legal Standard

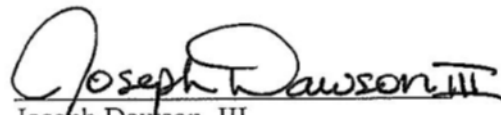
In the absence of objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). The Court must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

### D. Conclusion

Since Plaintiff has not objected, after a thorough review of the Report and Recommendation and the record in this case, the Court finds no clear error on the face of the record. Thus, the Court adopts the Report (DE 16) and incorporates it here by reference.

It is, therefore, **ORDERED** that Plaintiff's claims are dismissed without prejudice for lack of prosecution under Rule 41(b), Fed. R. Civ. P.

**IT IS SO ORDERED.**

  
Joseph Dawson, III  
United States District Judge

Florence, South Carolina  
May 2, 2025

**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this order within thirty (30) days from this date under Rules 3 and 4 of the Federal Rules of Appellate Procedure.